

DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES, AND ADMINISTRATION OF COST ACCOUNTING STANDARDS

[CT, FP –NR&D, FP – R&D, LH/T&M, T&MC, CREI, A –E – 09/04] [FAR 52.230-3 – 04/98, 52.230-6 – 11/99]

SECTION I – DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES

(a) The Subcontractor, in connection with this Subcontract, shall:

- (1) Comply with the requirements of 48 CFR, Subpart 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs, 48 CFR, Subpart 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose, 48 CFR, Subpart 9904.405, Accounting for unallowable Costs, and 48 CFR, Subpart 9904.406, Cost Accounting Standard - Cost Accounting Period, as indicated in 48 CFR, Part 9904, and any corresponding implementing or supplementing provisions in the NFS in effect on the date of award of this Subcontract.
- (2) (CAS-covered Subcontracts only.) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 48 CFR, Subparts 9903.202-1 through 9903.202-5. If the Subcontractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

NOTE (1): First-tier Subcontractors shall be required to submit their Disclosure Statements to the Subcontractor. However, if a First-tier Subcontractor has previously submitted its Disclosure Statement to a Government Administrative Contracting Officer (ACO), it may satisfy that requirement by certifying to the Subcontractor the date of the Statement and the address of the Contracting Officer.

NOTE (2): In any case where a First-tier Subcontractor determines that the Disclosure Statement information is privileged and confidential and declines to provide it to the Subcontractor or higher tier First-tier Subcontractor, the Subcontractor may authorize direct submission of the First-tier Subcontractor's Disclosure Statement to the same Government offices to which the Subcontractor was required to make submission of its Disclosure Statement. Such authorization shall in no way relieve the Contractor of liability if it or a First-tier Subcontractor fails to comply with an applicable Cost Accounting Standard (CAS) or to follow any practice disclosed pursuant to this paragraph and such failure results in any increased costs paid by the United States. In view of the foregoing and since the Subcontract may be subject to adjustment under this Article by reason of any failure to comply with rules, regulations, and Standards as specified in 48 CFR, Subpart 9903.3, and 48 CFR, Subpart 9904, and any corresponding implementing or supplementing provisions in the NFS in connection with covered First-tier Subcontracts, it is expected that the Subcontractor may wish to include a clause in each such First-tier Subcontract requiring the First-tier Subcontractor to appropriately indemnify the Subcontractor. However, the inclusion of such a clause and the terms thereof are matters for negotiation and agreement between the Subcontractor and First-tier Subcontractor, provided that they do not conflict with the duties of the Subcontractor under its Subcontract with the Institute. It is also expected that any First-tier Subcontractor subject to such indemnification will generally require substantially similar indemnification to be submitted by its First-tier Subcontractors.

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- (A) Follow consistently the Subcontractor's cost accounting practices. A change to such practices may be proposed, however, by either the Government or the Subcontractor, and the Subcontractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this Subcontract, and the Disclosure Statement, if affected, must be amended accordingly.
- (B) The Subcontractor shall, when the parties agree to a change to a cost accounting practice and the Contracting Officer has made the finding required in 48 CFR, Subpart 9903.201-6(b), that the change is desirable and not detrimental to the interests of the Government, negotiate an equitable adjustment as provided in the "Changes" Article of this Subcontract. In the absence of the required finding, no agreement may be made under this Subcontract Article that will increase costs paid by the United States.

- (4) Agree to an adjustment of the Subcontract price or cost allowance, as appropriate, if the Subcontractor or a First-tier Subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States together with interest thereon computed at the rate determined under the Internal Revenue Code of 1986 (26 U.S.C. 6621), from the time the payment by the United States was made to the time the adjustment is effected.
- (b) If the parties fail to agree whether the Subcontractor has complied with an applicable CAS, rule, or regulation as specified in 48 CFR, Parts 9903 and 9904 and as to any cost adjustment demanded by the United States, the Subcontractor may, subject to the prior approval of the Institute, which approval will not be unreasonably withheld, process such disagreement as a dispute between the Institute and the Contracting Officer concerning a question of fact within the meaning of the "Disputes" clause of the Prime Contract.
- (c) The Subcontractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this Provision.
- (d) The Subcontractor shall include in all negotiated First-tier Subcontracts, which the Subcontractor enters into, the substance of this Provision, except paragraph (b) of this Section, and shall require such inclusion in all other First-tier Subcontracts of any tier, except that:
 - (1) If the First-tier Subcontract is awarded to a business unit which pursuant to 48 CFR, Subpart 9903.201, is required to follow all CAS, the clause entitled "Cost Accounting Standards," set forth in FAR 52.230-2 and any corresponding implementing or supplementing provisions in the NFS shall be inserted in lieu of this Article; or
 - (2) This requirement shall apply only to negotiated First-tier Subcontracts in excess of \$500,000.
 - (3) The requirement shall not apply to negotiated First-tier Subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR, Subpart 9903.201-1, and any corresponding implementing or supplementing provisions in the NFS.

SECTION II – Administration of Cost Accounting standards

For the purpose of administering Cost Accounting Standards (CAS) requirements under this Subcontract, the Subcontractor shall take the steps outlined in paragraphs (a) through (g) of this Section:

- (a) Submit to the cognizant Contracting Officer a description of any cost accounting practice change, the total potential impact of the change on Subcontracts containing a CAS provision, and a general dollar magnitude of the change which identifies the potential shift of costs between CAS-covered Subcontracts by Subcontract type (i.e., firm-fixed-price, incentive cost-plus-fixed-fee, etc.) and other Subcontractor business activity. As related to CAS-covered Subcontracts, the analysis should identify the potential impact on funds of the various Agencies/Departments (i.e., Department of Energy, National Aeronautics and Space Administration, Army, Navy, Air Force, other Department of Defense, other Government), as follows:
 - (1) For any change in cost accounting practices in accordance with subparagraph (a)(3) and subdivision (a)(4)(A) of Section I of this Provision, within 60 days (or such other date as may be mutually agreed to) after award of a Subcontract requiring this change.
 - (2) For any change in cost accounting practices proposed in accordance with subparagraph (a)(3) of Section I of this Provision, not less than 60 days (or such other date as may be mutually agreed to) before the effective date of the proposed change.
 - (3) For any failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by subparagraph (a)(4) of Section I of this Provision):
 - (A) Within 60 days (or such other date as may be mutually agreed to) after the date of agreement with the initial finding of noncompliance; or
 - (B) In the event of Subcontractor disagreement with the initial finding of noncompliance, within 60 days of the date the Subcontractor is notified by the Contracting Officer of the determination of noncompliance.
- (b) After an ACO determination of materiality, submit a cost impact proposal in the form and manner specified by the Contracting Officer within 60 days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to paragraph (a) of this Section. The cost impact proposal shall be in sufficient detail to permit evaluation, determination, and negotiation of the cost impact upon each separate CAS-covered Subcontract and First-tier Subcontract.

- (1) Cost impact proposals submitted for changes in cost accounting practices in accordance with subparagraph (a)(3) and subdivision (a)(4)(A) of Section I of this Provision shall identify the applicable standard or cost principle and all Subcontracts and subcontracts containing this Provision which have an award date before the effective date of that standard or cost principle.
 - (2) Cost impact proposals submitted for any change in cost accounting practices proposed in accordance with subparagraph (a)(3) of Section I of this Provision shall identify all Subcontracts and First-tier Subcontracts containing the "Disclosure and Consistency of Cost Accounting Practices" Provision.
 - (3) Cost impact proposals submitted for failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by subparagraph (a)(4) of Section I of this Provision shall identify the cost impact on each separate CAS covered Subcontract from the date of failure to comply until the noncompliance is corrected.
- (c) If the submissions required by paragraphs (a) and (b) of Section II of this Provision are not submitted within the specified time, or any extension granted by the Government Contracting Officer, an amount not to exceed 10% of each subsequent amount determined payable related to the Subcontractor's CAS-covered prime contracts, up to the estimated general dollar magnitude of the cost impact, may be withheld until such time as the required submission has been provided in the form and manner specified by the Government Contracting Officer .
 - (d) Agree with the Institute to appropriate amendments to Subcontracts and First-tier Subcontracts to reflect adjustments established in accordance with subparagraphs (a)(3) or (a)(4) of Section I of this Provision.
 - (e) For all First-tier Subcontracts subject to this Provision:
 - (1) So state in the body of the First-tier Subcontract, in the letter of award, or in both (self-deleting clauses shall not be used); and
 - (2) Include the substance of this Provision in all negotiated First-tier Subcontracts. In addition, within 30 days after award of the First-tier Subcontract, submit the following information to the Subcontractor's cognizant contract administration office for transmittal to the contract administrative office cognizant of the First-tier Subcontractor's facility:
 - (A) First-tier Subcontractor's name and First-tier Subcontract number.
 - (B) Dollar amount and date of award.
 - (C) Name of Subcontractor making the award.
 - (f) In the event an adjustment is required to be made to any First-tier Subcontract hereunder, notify the JPL Subcontract Manager and the First-tier Subcontractor's Government contract administration office in writing of any adjustments required to First-tier Subcontracts under this Subcontract and agree to an adjustment, based on them, to this Subcontract's price or estimated cost and fee. This notice is due within 30 days after proposed First-tier Subcontract adjustments are received and shall include a proposal for adjusting the higher tier subcontract or the prime contract appropriately.
 - (g) For First-tier Subcontracts containing this Provision require the First-tier Subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the First-tier Subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.